

### **REMARKS**

Claim 1 has been amended to incorporate the subject matter of claim 2 relating to flour component, Claim 4 relating to amount of flour, claim 6 relating to the amount of protein additive, claim 10 relating to the amount of hydrophobic ester, claim 12 relating to water content in the product; claims 2, 3, 4, 6, 10, 12 and 17 have been canceled; without prejudice.

Care has been taken not to introduce any new matter.

### ***Restriction/Claim Objection***

The Examiner has made final the requirement to elect for prosecution:

- Claims 1-13 and 19-20, drawn to a farinaceous-based food product and a meal kit, classified in class 426, subclass 557.
- Claims 14-18, drawn to a method of making a farinaceous-based food product, classified in class 426, subclass 496.

Claim 17 has been canceled, without prejudice. Claims 14-16 and 18 have been withdrawn.

Claim 20 has now been amended to depend on claim 19, thereby rendering the claim objection moot.

### ***The Present Invention***

The present invention as set forth in the independent claims 1 is directed to a farinaceous-based food product comprising

- (a) about 1.0% to about 15.0% by weight of a protein additive;
- (b) about 0.25% to about 2.5% by weight of a hydrophobic ester; and
- (c) about 65.0% to about 95.0% by weight of a flour mixture with at least about 50.0% by weight of the flour mixture comprising gluten protein; and
- (d) about 4.0% to about 18.0% by weight water.

The food product is formulated and dried in a manner to give a cross-section by scanning electron microscopy that visually displays substantially no protein fiber gaps or voids at about 2000 times magnification. The farinaceous-based food product is firm and non-sticky after cooking.

Independent claim 1 is further limited by dependent claims which specify that the protein additive in the farinaceous based food product is dried or liquid egg white, dried or liquid whole egg, gliadin or a mixture thereof (claim 5), etc.

**35 USC 112**

Applicants respectfully traverse the indefiniteness rejection of Claim 1 based on lack of disclosure of farinaceous material in claim 1. Claim 1 is a comprising claim and the preamble specifies that the product is farinaceous based. In any event, claim 1 has been amended to incorporate the subject matter 2 relating to flour component.

Applicants respectfully traverse the indefiniteness rejection of Claim 13 based on pepper being a spice. While dried powdered pepper may fall in the spice category, Applicants intended to recite non-powdered pepper among the other vegetables recited.

Applicants respectfully request that this rejection be reconsidered and withdrawn.

***The Claims Are Not Anticipated under 35 USC 102***

Claims 1-13 were rejected under 35 U.S.C. 102 as anticipated by Ventres et al. (EP0350552). Wiley Encyclopedia of Food Science and Technology was cited as evidence for HLB value of claim 7.

Applicants respectfully traverse the novelty rejection.

With reference to claim 2, now incorporated in claim 1, Ventres fails to disclose a flour mixture with at least about 50.0% by weight of the flour mixture comprising gluten protein.

Claim 3 relating to further comprising semolina has been canceled. The subject matter of Claim 4 has been incorporated in claim 1; claim 4 has been canceled. Claims 5 and 7 are not anticipated as dependent on claim 1 which is not anticipated as discussed above.

With reference to claim 6, now incorporated in claim 1, Ventres at Claim 14 on page 15 referred to in the Office Action fails to disclose about 1.0% to about 15.0% by weight of a protein additive with sufficient specificity to constitute anticipation.

With reference to Claim 8, Applicants respectfully submit that it is novel as dependent on a novel claim.

With reference to Claim 11, Ventres fails to disclose about 25.0% to about 35.0% water during or after extrusion with sufficient specificity to constitute anticipation.

With reference to Claim 12, now a part of independent claim 1, Ventres fails to disclose about 4.0% to about 18.0% by weight water in the product with sufficient specificity to constitute anticipation.

With reference to Claims 1 and 9, since all the same ingredients and process are not disclosed in Ventres as discussed above, the product does not necessarily have the same properties, and therefore there is no inherency. Ventres is aimed at reducing the drying requirements to achieve savings in energy and time. See abstract. In contrast, the process by which the present product is produced is aimed at achieving the electron microscopy parameter specified in claim 1, which is neither disclosed nor necessarily/inherently achieved by Ventres. As evidenced by Example 2 of the present Specification, the electron microscopy parameter is process dependent and Ventres uses a different process. Accordingly, there can be no inherency nor anticipation.

### ***35 USC 103***

Claims 19 and 20 were rejected under *35 USC 103 (a)* as unpatentable over Ventres as cited above in view of Oh et al. (US 6,217,918). As admitted in the Office Action, Ventres do not disclose a meal kit comprising farinaceous-based food product.

Claims 19 and 20 are novel and non-obvious as they depend on Claim 1 which is novel and non-obvious as discussed above.

The electron microscopy parameter specified in claim 1, which is neither disclosed nor necessarily/inherently achieved by Ventres, is not disclosed or suggested by Oh et al.

Oh et al. teach away from the present invention. Oh et al. dry freshly extruded pasta by toasting (i.e. using heated ambient air without added moisture). See Col. 2, lines 39-45. As discussed in the present Specification and comparative Example 2, this method is contrary to that of the present invention which dries pasta in the presence of moisture and which would not achieve the electron microscopy parameter specified in claim 1.

The Office Action cites to Col. 4, lines 33-35 of Oh for disclosure of lecithin. However, this is not relevant to the farinaceous product of the present inventions as Oh et al. disclose lecithin for use in granular product, which is a sauce component in the packaged product of Oh et al. See Oh et al. at Col. 4, lines 13-45. The fact that an element of a claim is disclosed somewhere in the art is not sufficient to constitute a prima facie case of obviousness nor a reason to combine Oh et al. with Ventres. The invention must be viewed as a whole. Viewed as a whole, the present claims are novel and non-obvious.

Accordingly, the claims are patentable.

## **CONCLUSION**

In light of the above amendments and remarks, it is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance in advancing the prosecution of the present application, applicants' undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

/Ellen Plotkin/

---

Ellen Plotkin  
Attorney for Applicant(s)  
Reg. No. 36,636

(201) 894-2253